



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05844/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Newport
On 24 August 2017**

**Decision & Reasons
Promulgated
On 7 September 2017**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**CB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Joseph instructed by Duncan Lewis Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the appellant who claims asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure and breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.

Introduction

2. The appellant is a citizen of Bangladesh who was born on 20 April 1985. She entered the United Kingdom on 11 February 2010 with a six month visit visa valid until 27 July 2010.
3. On 21 December 2015, the appellant claimed asylum. On 20 May 2016, the Secretary of State refused her claim for asylum, humanitarian protection and on human rights grounds. The appellant appealed to the First-tier Tribunal. In a decision promulgated on 1 December 2016, Judge Mathews dismissed the appellant's appeal on all grounds.
4. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal (Judge M J Gillespie) on 4 April 2017.

The Appellant's Claim

5. The basis of the appellant's claim was as follows. She claimed that, whilst in the UK, she had been forced to marry a man in the UK ("FA") on 18 April 2010, undertaking an Islamic marriage. The appellant was unhappy with the arrangement and, after about six months of marriage, she was taken to her sister's house and abandoned by FA. In 2012, her uncle arranged a divorce and FA's brother brought the divorce papers to her signed by FA. She has received threatening telephone calls from FA's brother, claiming that she has dishonoured his family on the basis that it was she who left FA. She fears FA's family if returned to Bangladesh.
6. Sometime after she was abandoned, the appellant went to live with her uncle in the UK. He was physically and verbally abusive. He was subsequently convicted in the Crown Court for falsely imprisoning her. Her brother gave evidence at the trial although the appellant did not. Nevertheless, the uncle's sons have threatened they will take revenge upon her in Bangladesh for taking part in the prosecution of their father. She fears her uncle's family if returned to Bangladesh.
7. In his determination, Judge Mathews rejected the appellant's account of her marriage, divorce or that she had been subject to threats or abuse.

The Appellant's Grounds

8. Mr Joseph, who represented the appellant, relied upon the grounds of appeal.
9. First, he submitted that the judge had made an adverse finding in relation to whether the appellant had married which was irrational. He submitted that there was the appellant's oral evidence, that of her brother and photographs. In addition, he submitted that the judge had stated that although there had been "reference to recordings of the wedding" (at [18]), there was "no recording" before him ([19]). Mr Joseph submitted that a DVD copy of the recording of the wedding was available at the hearing and, although he could not be certain, it had been drawn to the judge's attention but it had been decided not to play it.

10. Secondly, Mr Joseph submitted that the judge had been wrong to expect, and take into account as relevant to the appellant's credibility, the absence of supporting evidence from her family, in particular her mother.
11. Thirdly, it was unreasonable of the judge to take into account that there was an eighteen-month delay between the appellant's claim to have been abandoned by her husband and their divorce. He submitted that the appellant could not be responsible for her ex-husband's actions.
12. Fourthly, Mr Joseph submitted that it was irrational for the judge to take into account that no attempt had been made by her ex-husband's brothers to take revenge in the UK. The threat was from the brothers who were in Bangladesh and not from her ex-husband's family in the UK.
13. Fifthly, Mr Joseph submitted that it was irrational to count against the appellant that she had been threatened, that her case was that she had been warned of the threat by her ex-husband's family. There was nothing surprising or implausible in that.
14. Finally, Mr Joseph submitted that the judge had been wrong to make an adverse finding in relation to her claim to fear her uncle given that he accepted his conviction for falsely imprisoning the appellant. That, Mr Joseph submitted, reflected on the judge's approach to the appellant's evidence at para 26 of his determination in which he had regard to her failure to seek protection as soon as she was divorced.
15. Mr Diwnycz, who represented the respondent, accepted that the judge had been advised about the availability of the DVD recording at the hearing. He acknowledged that its existence was referred to by the appellant in her witness statement at para 19. Mr Diwnycz acknowledged that this called into question the judge's reasoning in making an adverse finding that the wedding had not taken place.
16. Further, Mr Diwnycz acknowledged that there was some inconsistency in the judge's findings at paras 29 and 35. Mr Diwnycz submitted that the judge's finding at para 29 was ambiguous. There he stated: "I am not satisfied that the appellant was married as claimed, divorced as claimed, or she suffered any threats or abuse during or after her asserted marriage". At para 35 he stated that he was not satisfied: "that she was married or divorced as claimed, or subject to any threats as claimed". Mr Diwnycz said it was not clear, as the judge granting permission pointed out, whether the judge had found that the marriage had not occurred or rather it had taken place but not in the circumstances alleged.
17. Mr Diwnycz did not seek to deal specifically with the remainder of Mr Joseph's submissions. Mr Diwnycz did not seek to put forward any positive submission to sustain the judge's decision, acknowledging that there was sufficient error to make the decision unsustainable.

Discussion

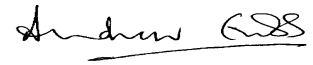
18. In substance, I accept Mr Joseph's submissions.

19. First, it is accepted by the respondent that a recording of the appellant's claimed wedding was available on DVD at the hearing. It was not played. The judge counts against the appellant that it was not available (see para 19). Given the position taken by Mr Diwnycz, this was factually an error on a matter relevant to the appellant's claim to have been married.
20. Secondly, Mr Diwnycz acknowledged that there were ambiguous or inconsistent findings in paras 29 and 35 of the determination as to whether or not the judge accepted that the appellant had been married at all. That, in itself, amounts to an error of law.
21. Thirdly, whilst I would not accept Mr Joseph's submission that, on the basis of the evidence the judge actually considered, any finding that the marriage had not taken place was irrational, the judge's reasoning was inadequate. I accept Mr Joseph's submission that there was nothing inherently implausible in the appellant's ex-husband's brothers warning her, in effect, what to expect if she returned to Bangladesh. That was, as Mr Diwnycz pointed out, still a threat. The fact that her ex-husband's relatives had not shown any adverse interest in her in the UK fails to grapple with her evidence that the threat was from his brothers in Bangladesh and there is no suggestion that other family members were involved. Further, it is not clear to me why the judge should count against the appellant that, despite knowing that her ex-husband had abandoned her, the divorce did not take place for a further eighteen months.
22. Finally, in relation to her fear of her uncle, I did not understand Mr Diwnycz to seek to support the judge's finding in the light of the other errors that he acknowledged. It was accepted, indeed it would be difficult not to do so, that the appellant's uncle had abused her, given the conviction for false imprisonment. In part, the judge's reasoning is based upon the appellant's credibility (see para 34) and his reasoning in that regard must, necessarily, be tainted by his adverse conclusion when considering her fear based upon a forced marriage which he rejects.
23. In the light of the submissions that were made by both representatives, and for the reasons I have given above, I am satisfied that the judge's adverse findings were legally flawed and cannot stand.

Decision

24. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and it is set aside.
25. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the appropriate disposition of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Mathews.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath.

A Grubb
Judge of the Upper Tribunal

6 September 2017